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10/089,717	04/02/2002	Robert John Pannekoek	02-313	2705

7590 11/19/2003  
Bachman & LaPointe  
Suite 1201  
900 Chapel Street  
New Haven, CT 06510

EXAMINER	
HEWITT, JAMES M	
ART UNIT	PAPER NUMBER
3679	

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/089,717

Applicant(s)

PANNEKOEK, ROBERT JOHN

Examiner

James M Hewitt

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities:

On page 3 lines 31-32, it is apparent that the phrase "circular shaped portion" should be replaced with "cylindrical portion", as it is the cylindrical portion 28 that has an outer diameter slightly smaller than the diameter of the first portion 24.

Appropriate correction is required.

### ***Claim Objections***

Claims 1-5 and 7-12 are objected to because of the following informalities:

In claim 1 line 13, it is apparent that the phrase "or the second" should be deleted or replaced with "and the second" as it is only when the third member is fully engaged with the first member (via the means for connecting adjustably the third member) that relative rotation of the inner and outer portions is prevented. For the same reasons, on lines 11-12, the phrase "means for connecting adjustably the third member to at least one of the first and second members" should be replaced with "means for connecting adjustably the third member to the first member" or with "means for connecting adjustably the third member to the first and second members".

Appropriate correction is required.

Note that claims 2-5 and 7-12 are objected to because they depend from claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Mair (US 1,800,098).

With respect to claim 1, Mair discloses an elongate member for locating an article (such as a light source attached at 18) remote from a base position (defined at the end of portion 10, at the end of 17), characterized in that the elongate member comprises an inner elongate portion (10) having a longitudinal axis, the inner elongate portion extending, in use, from the base position, an outer elongate portion (11), the outer elongate portion being arranged to receive the article (via 18), and means for interconnecting the inner elongate portion to the outer elongate portion (19-21, and the threads of 21) so as to permit relative rotation of the inner and outer portions about an axis of rotation, the axis of rotation being disposed at an acute angle relative to the longitudinal axis of the inner elongate portion (the axis about which outer portion 11 is rotated from the position shown in Figure 3 to that shown in Figure 5, relative to the longitudinal axis of the inner portion 10, is 45 degrees), the means for interconnecting the inner elongate portion to the outer elongate portion including a first member (19) connected to the inner elongate portion, a second member (20) connected to the outer elongate portion, a third member (21), and means for connecting adjustably the third

member (the threads on the third member constitute the means for connecting adjustably the third member) to the first member, the means for connecting adjustably the third member being arranged such that the third member may be fully engaged with the first member to prevent the relative rotation of the inner and outer elongate portions (when the third member is fully engaged with the first member, the flange of the third member which abuts second member 20, prevents swiveling or relative rotation of the inner and outer portions), and the third member may be partially disengaged from the first and second members to permit the relative rotation of the inner and outer elongate portions (when the third member is loosened from the first member, the flange of the third member no longer clamps the second member 20 tight, and thus rotation of the inner and outer portions is permitted).

Note the recited "means for interconnecting the inner elongate portion to the outer elongate portion" and "means for connecting adjustably the third member to at least one of the first and second members" have not been considered to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph, particularly because Applicant made no mention of intending such in the amendment filed 8/11/03, and because of Applicant's statement on page 8 of said amendment: "The Examiner also indicated that claim 7 contained allowable subject matter. By the instant amendment, the broad subject matter of dependent claims 7 has been incorporated into independent claim 1..." If Applicant intended to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph, the means plus function language now present in claim 1 would render claim 1 more limiting than original claim 7, and claim 1 in its present form could not be considered more broad than original claim 7.

With respect to claim 2, wherein the outer elongate portion (11) is arranged to move between a first position (shown in Figure 5) whereby the outer elongate portion is substantially coaxial with the inner elongate portion (10) and a second position (shown in Figure 3) whereby the outer elongate portion is substantially perpendicular to the inner elongate portion.

With respect to claim 3, wherein the acute angle is 45 degrees and therefore between 30 and 60 degrees.

With respect to claim 4, wherein the first member is a first plate member (flange 19) fixedly attached to the inner elongate portion (10) at an end remote from the base position, and the second member is a second plate member (flange 20) fixedly attached to the outer elongate portion (11) at an end remote from the article wherein, in use, the first plate member is located adjacent the second plate member (see Figures 3 and 5).

With respect to claim 5, wherein the first plate member has an upper surface and the second plate member has a lower surface, the upper surface of the first plate member being adjacent the lower surface of the second plate member in use, and the axis of rotation being perpendicular to the upper surface of the first plate member.

Refer to Figure 3.

With respect to claim 7, characterized in that the third member is a third plate member (21), the third plate member including a centrally disposed aperture and being arranged to locate, in use, about the outer elongate portion and adjacent the second plate member (20), wherein the means for connecting adjustably the third member (the threads of 21) is arranged to connect the first plate member and the third plate member.

With respect to claim 12, Mair's inner elongate portion, at the base position, is arranged to be mounted to a surface, e.g. the threaded surface of pipe (19) as shown in Figure 4.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mair (US 1,880,098) in view of Jendrewski DE 29 18 532).

With respect to claim 10, Mair fails to teach that the means for interconnecting the inner and outer elongate portions includes a cylindrical portion arranged to be coaxial with the axis of rotation, and wherein the cylindrical portion extends from one of the inner and outer elongate portions and wherein the other of the inner and outer elongate portions includes an aperture arranged to receive the cylindrical portion. Jendrewski et al discloses an elongate member for locating an article (1) remote from a base position (the ground or earth), characterized in that the elongate member comprises an inner elongate portion (parts 3 and 4), the inner elongate portion extending, in use (when ground stake 28 has been inserted into the ground), from the base position, an outer elongate portion (2), the outer elongate portion being arranged to receive the article (see Figure 1), and interconnecting means (see Figures 2 and 4

and Attachment B from the 4/9/03 office action), the interconnecting means being arranged to connect the inner elongate portion to the outer elongate portion and to permit relative rotation of the inner and outer portions about an axis of rotation (B), the axis of rotation being disposed at an acute angle relative to a longitudinal axis (A) of the inner elongate portion (see Figures 2 and 4). Jendrewski's interconnecting means includes a cylindrical portion arranged to be coaxial with the axis of rotation, and wherein the cylindrical portion extends from the inner elongate portion and wherein the outer elongate portion includes an aperture arranged to receive the cylindrical portion. Refer to Figure 2 and Attachment B. In view of Jendrewski's teaching, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mair's fitting to include a cylindrical portion arranged to be coaxial with the axis of rotation, wherein the cylindrical portion extends from the inner elongate portion and wherein the outer elongate portion includes an aperture arranged to receive the cylindrical portion in order to permit quicker alignment and assembly of the inner and elongate portion while still permitting cables and wiring to pass.

With respect to claim 11, Mair fails to teach that the article includes a light source. Mair's fitting is used to connect conduits or cables used in electrical wiring, and includes means (18) on his outer elongate portion by which to attach an article such as a light source. Jendrewski teaches attaching a light source to his outer elongate portion (2). In view of Jendrewski's teaching, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mair to



accommodate and include a light source at the end (at 18) of his outer elongate portion in order to permit Mair's device to be capable of producing light.

### ***Allowable Subject Matter***

Claims 8-9 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Note also that the allowability of claims 8 and 9 is contingent on overcoming the above objections to claim 1 (see ***Claim Objections***).

### ***Response to Arguments***

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

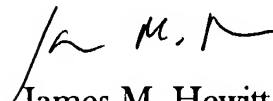
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M Hewitt whose telephone number is 703-305-0552. The examiner can normally be reached on M-F, 930am-600pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on 703-308-1159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
James M. Hewitt  
Patent Examiner  
Technology Center 3600